

Adopted	Rejected
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## COMMITTEE REPORT

YES:	11
NO:	0

### MR. SPEAKER:

*Your Committee on Public Health, to which was referred Senate Bill 206, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1       Page 1, between the enacting clause and line 1, begin a new
- 2       paragraph and insert:
- 3       "SECTION 1. IC 25-22.5-1-2 IS AMENDED TO READ AS
- 4       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) This article, as
- 5       it relates to the unlawful or unauthorized practice of medicine or
- 6       osteopathic medicine, does not apply to any of the following:
- 7       (1) A student in training in a medical school approved by the
- 8       board, or while performing duties as an intern or a resident in a
- 9       hospital under the supervision of the hospital's staff or in a
- 10      program approved by the medical school.
- 11      (2) A person who renders service in case of emergency where no
- 12      fee or other consideration is contemplated, charged, or received.
- 13      (3) A paramedic (as defined in IC 16-18-2-266), an emergency
- 14      medical technician-basic advanced (as defined in
- 15      IC 16-18-2-112.5), an emergency medical technician-intermediate

(as defined in IC 16-18-2-112.7), an emergency medical technician (as defined in IC 16-18-2-112), or a person with equivalent certification from another state who renders advanced life support (as defined in IC 16-18-2-7) or basic life support (as defined in IC 16-18-2-33.5):

(A) during a disaster emergency declared by the governor under IC 10-14-3-12 in response to an act that the governor in good faith believes to be an act of terrorism (as defined in IC 35-41-1-26.5); and

(B) in accordance with the rules adopted by the Indiana emergency medical services commission or the disaster emergency declaration of the governor.

(4) Commissioned medical officers or medical service officers of the armed forces of the United States, the United States Public Health Service, and medical officers of the United States Department of Veterans Affairs in the discharge of their official duties in Indiana.

(5) An individual who is not a licensee who resides in another state or country and is authorized to practice medicine or osteopathic medicine there, who is called in for consultation by an individual licensed to practice medicine or osteopathic medicine in Indiana.

(6) A person administering a domestic or family remedy to a member of the person's family.

(7) A member of a church practicing the religious tenets of the church if the member does not make a medical diagnosis, prescribe or administer drugs or medicines, perform surgical or physical operations, or assume the title of or profess to be a physician.

(8) A school corporation and a school employee who acts under IC 34-30-14 (or IC 34-4-16.5-3.5 before its repeal).

(9) A chiropractor practicing the chiropractor's profession under IC 25-10 or to an employee of a chiropractor acting under the direction and supervision of the chiropractor under IC 25-10-1-13.

(10) A dental hygienist practicing the dental hygienist's profession under IC 25-13.

(11) A dentist practicing the dentist's profession under IC 25-14.

(12) A hearing aid dealer practicing the hearing aid dealer's

- 1 profession under IC 25-20.
- 2 (13) A nurse practicing the nurse's profession under IC 25-23.
- 3 However, a registered nurse may administer anesthesia if the
- 4 registered nurse acts under the direction of and in the immediate
- 5 presence of a physician and holds a certificate of completion of a
- 6 course in anesthesia approved by the American Association of
- 7 Nurse Anesthetists or a course approved by the board.
- 8 (14) An optometrist practicing the optometrist's profession under
- 9 IC 25-24.
- 10 (15) A pharmacist practicing the pharmacist's profession under
- 11 IC 25-26.
- 12 (16) A physical therapist practicing the physical therapist's
- 13 profession under IC 25-27.
- 14 (17) A podiatrist practicing the podiatrist's profession under
- 15 IC 25-29.
- 16 (18) A psychologist practicing the psychologist's profession under
- 17 IC 25-33.
- 18 (19) A speech-language pathologist or audiologist practicing the
- 19 pathologist's or audiologist's profession under IC 25-35.6.
- 20 (20) An employee of a physician or group of physicians who
- 21 performs an act, a duty, or a function that is customarily within
- 22 the specific area of practice of the employing physician or group
- 23 of physicians, if the act, duty, or function is performed under the
- 24 direction and supervision of the employing physician or a
- 25 physician of the employing group within whose area of practice
- 26 the act, duty, or function falls. An employee may not make a
- 27 diagnosis or prescribe a treatment and must report the results of an
- 28 examination of a patient conducted by the employee to the
- 29 employing physician or the physician of the employing group
- 30 under whose supervision the employee is working. An employee
- 31 may not administer medication without the specific order of the
- 32 employing physician or a physician of the employing group.
- 33 Unless an employee is licensed or registered to independently
- 34 practice in a profession described in subdivisions (9) through (18),
- 35 nothing in this subsection grants the employee independent
- 36 practitioner status or the authority to perform patient services in
- 37 an independent practice in a profession.
- 38 (21) A hospital licensed under IC 16-21 or IC 12-25.

(22) A health care organization whose members, shareholders, or partners are individuals, partnerships, corporations, facilities, or institutions licensed or legally authorized by this state to provide health care or professional services as:

(A) a physician;

(B) a psychiatric hospital;

(C) a hospital;

(D) a health maintenance organization or limited service health maintenance organization;

(E) a health facility;

(F) a dentist;

(G) a registered or licensed practical nurse;

(H) a midwife;

(I) an optometrist;

(J) a podiatrist;

(K) a chiropractor;

(L) a physical therapist; or

(M) a psychologist.

(23) A physician assistant practicing the physician assistant's profession under IC 25-27.5.

(24) A physician providing medical treatment under IC 25-22.5-1-2.1.

(25) An attendant who provides care services (as defined in ~~IC 16-27-1-0.5~~; **IC 16-18-2-28.5**).

(26) A personal services attendant providing authorized attendant care services under IC 12-10-17.

(b) A person described in subsection (a)(9) through (a)(18) is not excluded from the application of this article if:

(1) the person performs an act that an Indiana statute does not authorize the person to perform; and

(2) the act qualifies in whole or in part as the practice of medicine or osteopathic medicine.

(c) An employment or other contractual relationship between an entity described in subsection (a)(21) through (a)(22) and a licensed physician does not constitute the unlawful practice of medicine under this article if the entity does not direct or control independent medical acts, decisions, or judgment of the licensed physician. However, if the direction or control is done by the entity under IC 34-30-15 (or

IC 34-4-12.6 before its repeal), the entity is excluded from the application of this article as it relates to the unlawful practice of medicine or osteopathic medicine.

(d) This subsection does not apply to a prescription or drug order for a legend drug that is filled or refilled in a pharmacy owned or operated by a hospital licensed under IC 16-21. A physician licensed in Indiana who permits or authorizes a person to fill or refill a prescription or drug order for a legend drug except as authorized in IC 16-42-19-11 through IC 16-42-19-19 is subject to disciplinary action under IC 25-1-9. A person who violates this subsection commits the unlawful practice of medicine under this chapter.

(e) A person described in subsection (a)(8) shall not be authorized to dispense contraceptives or birth control devices.

SECTION 2. IC 25-23-1-27.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27.1. (a) As used in this section, "licensed health professional" means:

- (1) a registered nurse;
- (2) a licensed practical nurse;
- (3) a physician with an unlimited license to practice medicine or osteopathic medicine;
- (4) a licensed dentist;
- (5) a licensed chiropractor;
- (6) a licensed optometrist;
- (7) a licensed pharmacist;
- (8) a licensed physical therapist;
- (9) a licensed psychologist;
- (10) a licensed podiatrist; or
- (11) a licensed speech-language pathologist or audiologist.

(b) This chapter does not prohibit:

- (1) furnishing nursing assistance in an emergency;
- (2) the practice of nursing by any student enrolled in a board approved nursing education program where such practice is incidental to the student's program of study;
- (3) the practice of any nurse who is employed by the government of the United States or any of its bureaus, divisions, or agencies while in the discharge of the nurse's official duties;
- (4) the gratuitous care of sick, injured, or infirm individuals by friends or the family of that individual;

(5) the care of the sick, injured, or infirm in the home for compensation if the person assists only:

(A) with personal care;

(B) in the administration of a domestic or family remedy; or

(C) in the administration of a remedy that is ordered by a licensed health professional and that is within the scope of practice of the licensed health professional under Indiana law;

(6) performance of tasks by persons who provide health care services which are delegated or ordered by licensed health professionals, if the delegated or ordered tasks do not exceed the scope of practice of the licensed health professionals under Indiana law;

(7) a physician with an unlimited license to practice medicine or osteopathic medicine in Indiana, a licensed dentist, chiropractor, dental hygienist, optometrist, pharmacist, physical therapist, podiatrist, psychologist, speech-language pathologist, or audiologist from practicing the person's profession;

(8) a school corporation or school employee from acting under IC 34-30-14;

(9) a personal services attendant from providing authorized attendant care services under IC 12-10-17; or

(10) an attendant who provides attendant care services (as defined by IC 16-27-1-0.5: in 16-18-2-28.5).

SECTION 3. IC 12-9-5-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5. Notwithstanding any other law:**

**(1) home health agencies licensed under IC 16-27-1 are approved to provide home health services; and**

**(2) personal services agencies licensed under IC 16-27-4 are approved to provide personal services;**

**under any federal waiver granted to the state under 42 U.S.C. 1315 or 42 U.S.C. 1396n.**

SECTION 4. IC 16-18-2-28.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 28.5. (a) "Attendant care services", for purposes of IC 16-27-1 has the meaning set forth in IC 16-27-1-0.5: and IC 16-27-4, means services:**

**(1) that could be performed by an impaired individual for whom the services are provided if the individual were not**

- 1           impaired; and
- 2           **(2) that enable the impaired individual:**
  - 3               **(A) to live in the individual's home and community rather**
  - 4               **than in an institution; and**
  - 5               **(B) to carry out functions of daily living, self-care, and**
  - 6               **mobility.**
- 7           **(b) The term includes the following:**
  - 8               **(1) Assistance in getting in and out of beds, wheelchairs, and**
  - 9               **motor vehicles.**
  - 10              **(2) Assistance with routine bodily functions, including:**
    - 11                  **(A) bathing and personal hygiene;**
    - 12                  **(B) using the toilet;**
    - 13                  **(C) dressing and grooming; and**
    - 14                  **(D) feeding, including preparation and cleanup.**
  - 15              **(3) The provision of assistance:**
    - 16                  **(A) through providing reminders or cues to take**
    - 17                  **medication, the opening of preset medication containers,**
    - 18                  **and providing assistance in the handling or ingesting of**
    - 19                  **noncontrolled substance medications, including eye drops,**
    - 20                  **herbs, supplements, and over-the-counter medications; and**
    - 21                  **(B) to an individual who is unable to accomplish the task**
    - 22                  **due to an impairment and who is:**
      - 23                      **(i) competent and has directed the services; or**
      - 24                      **(ii) incompetent and has the services directed by a**
      - 25                      **competent individual who may consent to health care for**
      - 26                      **the impaired individual.**

27           SECTION 5. IC 16-18-2-56.5 IS ADDED TO THE INDIANA  
 28 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 29 [EFFECTIVE JULY 1, 2005]: **Sec. 56.5. "Client", for purposes of**  
 30 **IC 16-27-4, has the meaning set forth in IC 16-27-4-1.**

31           SECTION 6. IC 16-18-2-162 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 162. (a) "Health care  
 33 professional", for purposes of IC 16-27-1 **and IC 16-27-4**, has the  
 34 meaning set forth in IC 16-27-1-1.

35           (b) "Health care professional", for purposes of IC 16-27-2, has the  
 36 meaning set forth in IC 16-27-2-1.

37           SECTION 7. IC 16-18-2-266.5 IS ADDED TO THE INDIANA  
 38 CODE AS A **NEW** SECTION TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2005]: **Sec. 266.5. "Parent personal services agency", for purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-2.**

SECTION 8. IC 16-18-2-277.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 277.6. "Personal representative", for purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-3.**

SECTION 9. IC 16-18-2-277.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 277.7. "Personal services", for purposes of IC 16-27-2 and IC 16-27-4, has the meaning set forth in IC 16-27-4-4.**

SECTION 10. IC 16-18-2-277.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 277.8. "Personal services agency", for purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-5.**

SECTION 11. IC 16-27-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) As used in this chapter, "home health services" means services that: ~~are:~~

(1) **are** provided to a patient by:

(A) a home health agency; or

(B) another person under an arrangement with a home health agency;

in the temporary or permanent residence of the patient; and

(2) **either, are required by law to be:**

(A) ordered by a licensed physician, a licensed dentist, a licensed chiropractor, a licensed podiatrist, or a licensed optometrist **for the service to be performed; or**

(B) **performed only by a health care professional.**

(b) The term includes the following:

(1) Nursing treatment and procedures.

(2) Physical therapy.

(3) Occupational therapy.

(4) Speech therapy.

(5) Medical social services.

(6) Home health aide services.



1 (7) Other therapeutic services.

2 (c) The term does not apply to the following:

3 (1) Services provided by a physician licensed under IC 25-22.5.

4 (2) Incidental services provided by a licensed health facility to  
5 patients of the licensed health facility.

6 (3) Services provided by employers or membership organizations  
7 using health care professionals for their employees, members, and  
8 families of the employees or members if the health or home care  
9 services are not the predominant purpose of the employer or a  
10 membership organization's business.

11 (4) Nonmedical nursing care given in accordance with the tenets  
12 and practice of a recognized church or religious denomination to  
13 a patient who depends upon healing by prayer and spiritual means  
14 alone in accordance with the tenets and practices of the patient's  
15 church or religious denomination.

16 (5) Services that are allowed to be performed by an attendant  
17 under IC 16-27-1-10.

18 (6) Authorized services provided by a personal services attendant  
19 under IC 12-10-17.

20 SECTION 12. IC 16-27-1-7 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. The state department  
22 shall adopt rules under IC 4-22-2 to do the following:

23 (1) Protect the health, safety, and welfare of patients.

24 (2) Govern the qualifications of applicants for licenses.

25 (3) Govern the operating policies, supervision, and maintenance  
26 of service records of home health agencies.

27 (4) Govern the procedure for issuing, renewing, denying, or  
28 revoking an annual license to a home health agency, including the  
29 following:

30 (A) The form and content of the license.

31 (B) The collection of an annual license fee of not more than  
32 two hundred **fifty** dollars (~~\$200~~) (**\$250**) that the state  
33 department may waive.

34 (5) Exempt persons who do not provide home health services  
35 under this chapter.

36 SECTION 13. IC 16-27-2-2.2 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.2. As used in this  
38 chapter, "services" includes:

- (1) home health services (as defined in IC 16-27-1-5); ~~and~~  
 (2) any services such as homemaker, companion, sitter, or  
 handyman services provided by a home health agency in the  
 temporary or permanent residence of a patient or client of the  
 home health agency; **and**  
**(3) personal services.**

SECTION 14. IC 16-27-2-3 IS AMENDED TO READ AS  
 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A person may  
 not operate a home health agency **or a personal services agency** if the  
 person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).  
 (2) Criminal deviate conduct (IC 35-42-4-2).  
 (3) Exploitation of an endangered adult (IC 35-46-1-12).  
 (4) Failure to report battery, neglect, or exploitation of an  
 endangered adult (IC 35-46-1-13).  
 (5) Theft (IC 35-43-4), if the person's conviction for theft occurred  
 less than ten (10) years before the date of submission by the  
 person of an application for licensure as a home health agency  
 under IC 16-27-1 **or as a personal services agency under**  
**IC 16-27-4.**

(b) A person who knowingly or intentionally violates this section  
 commits a Class A misdemeanor.

SECTION 15. IC 16-27-2-4 IS AMENDED TO READ AS  
 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person who  
 operates a home health agency **under IC 16-27-1 or a personal**  
**services agency under IC 16-27-4** shall apply, not more than three (3)  
 business days after the date that an employee begins to provide services  
 in a patient's temporary or permanent residence, for a copy of the  
 employee's limited criminal history from the Indiana central repository  
 for criminal history information under IC 10-13-3.

(b) A home health agency **or personal services agency** may not  
 employ a person to provide services in a patient's or client's temporary  
 or permanent residence for more than three (3) business days without  
 applying for that person's limited criminal history as required by  
 subsection (a).

SECTION 16. IC 16-27-2-5 IS AMENDED TO READ AS  
 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Except as  
 provided in subsection (b), a person who operates a home health agency

1 **under IC 16-27-1 or a personal services agency under IC 16-27-4**  
 2 may not employ a person to provide services in a patient's or client's  
 3 temporary or permanent residence if that person's limited criminal  
 4 history indicates that the person has been convicted of any of the  
 5 following:

- 6 (1) Rape (IC 35-42-4-1).
- 7 (2) Criminal deviate conduct (IC 35-42-4-2).
- 8 (3) Exploitation of an endangered adult (IC 35-46-1-12).
- 9 (4) Failure to report battery, neglect, or exploitation of an  
 10 endangered adult (IC 35-46-1-13).
- 11 (5) Theft (IC 35-43-4), if the conviction for theft occurred less  
 12 than ten (10) years before the person's employment application  
 13 date.

14 (b) A home health agency **or personal services agency** may not  
 15 employ a person to provide services in a patient's or client's temporary  
 16 or permanent residence for more than twenty-one (21) calendar days  
 17 without receipt of that person's limited criminal history required by  
 18 section 4 of this chapter, unless the Indiana central repository for  
 19 criminal history information under IC 10-13-3 is solely responsible for  
 20 failing to provide the person's limited criminal history to the home  
 21 health agency **or personal services agency** within the time required  
 22 under this subsection.

23 SECTION 17. IC 16-27-2-6 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A person who  
 25 operates a home health agency **or a personal services agency under**  
 26 **IC 16-27-4** is responsible for the payment of fees under IC 10-13-3-30  
 27 and other fees required under section 4 of this chapter.

28 (b) A home health agency **or personal services agency** may require  
 29 a person who applies to the home health agency **or personal services**  
 30 **agency** for employment to provide services in a patient's or client's  
 31 temporary or permanent residence:

- 32 (1) to pay the cost of fees described in subsection (a) to the home  
 33 health agency **or personal services agency** at the time the person  
 34 submits an application for employment; or
- 35 (2) to reimburse the home health agency **or personal services**  
 36 **agency** for the cost of fees described in subsection (a).

37 SECTION 18. IC 16-27-2-7 IS AMENDED TO READ AS  
 38 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. A person who:

(1) operates a home health agency **or personal services agency**;  
and

(2) violates section 4 or 5 of this chapter;  
commits a Class A infraction.

SECTION 19. IC 16-27-4 IS ADDED TO THE INDIANA CODE  
AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2005]:

**Chapter 4. Licensure of Personal Services Agencies**

**Sec. 1. As used in this chapter, "client" means an individual who  
has been accepted to receive personal services from a personal  
services agency.**

**Sec. 2. As used in this chapter, "parent personal services  
agency" means the personal services agency that develops and  
maintains administrative and fiscal control over a branch office.**

**Sec. 3. As used in this chapter, "personal representative" means  
a person who has legal authority to act on behalf of the client with  
regard to the action to be taken.**

**Sec. 4. (a) As used in this chapter, "personal services" means:**

- (1) attendant care services;**
- (2) homemaker services that assist with or perform household  
tasks, including housekeeping, shopping, laundry, meal  
planning and preparation, and cleaning; and**
- (3) companion services that provide fellowship, care, and  
protection for a client, including transportation, letter writing,  
mail reading, and escort services;**

**that are provided to a client at the client's residence.**

**(b) The term does not apply to the following:**

- (1) Incidental services provided by a licensed health facility to  
patients of the licensed health facility.**
- (2) Services provided by employers or membership  
organizations for their employees, members, and families of  
the employees or members if the services are not the  
predominant purpose of the employer or the membership  
organization's business.**
- (3) Services that are allowed to be performed by a personal  
services attendant under IC 12-10-17.**
- (4) Services that require the order of a health care  
professional for the services to be lawfully performed in**

1 **Indiana.**

2 **(5) Assisted living Medicaid waiver services.**

3 **(6) Services that are performed by a facility described in**  
 4 **IC 12-10-15.**

5 **Sec. 5. (a) As used in this chapter, "personal services agency"**  
 6 **means a person that provides or offers to provide a personal service**  
 7 **for compensation, whether through the agency's own employees or**  
 8 **by arrangement with another person.**

9 **(b) The term does not include the following:**

10 **(1) An individual who provides personal services only to the**  
 11 **individual's family and to not more than three (3) individuals**  
 12 **per residence and not more than a total of seven (7)**  
 13 **individuals concurrently. As used in this subdivision, "family"**  
 14 **means the individual's spouse, child, parent, parent-in-law,**  
 15 **grandparent, grandchild, brother, brother-in-law, sister,**  
 16 **sister-in-law, aunt, aunt-in-law, uncle, uncle-in-law, niece, and**  
 17 **nephew.**

18 **(2) A local health department as described in IC 16-20 or**  
 19 **IC 16-22-8.**

20 **(3) A person that:**

21 **(A) is approved by the division of disability, aging, and**  
 22 **rehabilitative services to provide supported living services**  
 23 **or supported living support to individuals with**  
 24 **developmental disabilities;**

25 **(B) is subject to rules adopted under IC 12-11-2.1; and**

26 **(C) serves only individuals with developmental disabilities**  
 27 **who are in a placement authorized under IC 12-11-2.1-4.**

28 **Sec. 6. (a) To operate a personal services agency, a person must**  
 29 **obtain a license from the state health commissioner. A personal**  
 30 **services agency may not be opened, operated, managed,**  
 31 **maintained, or conduct business without a license from the state**  
 32 **department. Each parent personal services agency must obtain a**  
 33 **separate license.**

34 **(b) A parent personal services agency may maintain branch**  
 35 **offices that operate under the license of the parent personal**  
 36 **services agency. Each branch office must be:**

37 **(1) at a location or site from which the personal services**  
 38 **agency provides services;**

1           (2) owned and controlled by the parent personal services  
2           agency; and

3           (3) located within a radius of one hundred twenty (120) miles  
4           of the parent personal services agency.

5           (c) A license is required for any personal services agency  
6           providing services in Indiana. An out-of-state personal services  
7           agency must be authorized by the secretary of state to conduct  
8           business in Indiana and have a branch office in Indiana.

9           (d) Application for a license to operate a personal services  
10          agency must be made on a form provided by the state department  
11          and must be accompanied by the payment of a fee of two hundred  
12          fifty dollars (\$250). The application may not require any  
13          information except as required under this chapter.

14          (e) After receiving a completed application that demonstrates  
15          prima facie compliance with the requirements of this chapter and  
16          the payment of the fee required by subsection (d), the state  
17          department shall issue a license to the applicant to operate a  
18          personal services agency. The state department may conduct an  
19          onsite inspection in conjunction with the issuance of an initial  
20          license or the renewal of a license.

21          (f) In the state department's consideration of:

22               (1) an application for licensure;

23               (2) an application for renewal of licensure;

24               (3) a complaint alleging noncompliance with the requirements  
25               of this chapter; or

26               (4) an investigation conducted under section 7(a) of this  
27               chapter;

28          the state department's onsite inspections in conjunction with those  
29          actions are limited to determining the personal service agency's  
30          compliance with the requirements of this chapter or permitting or  
31          aiding an illegal act in a personal services agency.

32          (g) Subject to subsection (e), when conducting an onsite  
33          inspection, the state department must receive all documents  
34          necessary to determine the personal service agency's compliance  
35          with the requirements of this chapter. A personal services agency  
36          must produce documents requested by the state department  
37          surveyor not less than twenty-four (24) hours after the documents  
38          have been requested.

1       (h) A license expires one (1) year after the date of issuance of the  
2 license under subsection (e). However, the state department may  
3 issue an initial license for a period of less than one (1) year to  
4 stagger the expiration dates. The licensee shall notify the state  
5 department in writing at least thirty (30) days before closing or  
6 selling the personal services agency.

7       (i) A personal services agency license may not be transferred or  
8 assigned. Upon sale, assignment, lease, or other transfer, including  
9 transfers that qualify as a change in ownership, the new owner or  
10 person in interest must obtain a license from the state department  
11 under this chapter before maintaining, operating, or conducting  
12 the personal services agency.

13       (j) A home health agency licensed under IC 16-27-1 that  
14 operates a personal services agency within the home health agency  
15 is subject to the requirements of this chapter. The requirements  
16 under IC 16-27-1 do not apply to a home health agency's personal  
17 services agency. The requirements under this chapter do not apply  
18 to a home health agency's operations. A home health agency that  
19 is licensed under IC 16-27-1 is not required to obtain a license  
20 under this chapter.

21       (k) If a person who is licensed to operate a personal services  
22 agency is also licensed to operate a home health agency under  
23 IC 16-27-1, an onsite inspection for renewal of the person's  
24 personal services agency license must, to the extent feasible, be  
25 conducted at the same time as an onsite inspection of the home  
26 health agency license.

27       Sec. 7. (a) The state department shall investigate a report of an  
28 unlicensed personal services agency operation and report its  
29 findings to the attorney general.

30       (b) The attorney general may do the following:

31           (1) Seek an injunction in the circuit or superior court of the  
32 county in which the unlicensed home health agency is located.

33           (2) Prosecute violations under section 23 of this chapter.

34       Sec. 8. (a) If a personal services agency is aware that the client's  
35 medical or health condition has become unstable or unpredictable,  
36 the personal services agency shall notify the client, the client's  
37 personal representative, a family member, other relative of the  
38 client, or other person identified by the client of the need for a

1 referral for medical or health services. The notification may be  
2 given in writing or orally and must be documented in the client's  
3 record with the personal services agency.

4 (b) The personal services agency may continue to provide  
5 personal services for a client with an unstable or unpredictable  
6 medical or health condition but may not manage or represent itself  
7 as able to manage the client's medical or health condition.

8 Sec. 9. (a) A personal services agency shall employ an individual  
9 to act as the personal services agency's manager. The manager is  
10 responsible for the organization and daily operation of the personal  
11 services agency.

12 (b) The manager may designate in writing one (1) or more  
13 individuals to act on behalf of or to perform any or all of the  
14 responsibilities of the personal services agency's manager under  
15 this chapter.

16 Sec. 10. The personal services agency's manager or the  
17 manager's designee shall prepare a service plan for a client before  
18 providing personal services for the client. A permanent change to  
19 the service plan requires a written change to the service plan. The  
20 service plan must:

21 (1) be in writing, dated, and signed by the individual who  
22 prepared it;

23 (2) list the types and schedule of services to be provided; and

24 (3) state that the services to be provided to the client are  
25 subject to the client's right to temporarily suspend,  
26 permanently terminate, temporarily add, or permanently add  
27 the provision of any service.

28 All permanent changes require a change in the written service  
29 plan. The service plan must be signed and dated by the client not  
30 later than fourteen (14) days after services begin for the client and  
31 not later than fourteen (14) days after any permanent change to the  
32 service plan.

33 Sec. 11. The personal services agency's manager or the  
34 manager's designee shall conduct a client satisfaction review with  
35 the client every seventy-six (76) to one hundred four (104) days to  
36 discuss the services being provided and to determine if any change  
37 in the plan of services should occur. The review with the client may  
38 be in person or by telephone. This client satisfaction review must:



1           (1) be put in writing; and

2           (2) be signed and dated by the individual conducting the  
3           review.

4           **Sec. 12. The personal services agency shall provide the client or**  
5           **the client's personal representative with the personal services**  
6           **agency's written statement of client rights not more than seven (7)**  
7           **days after providing services to the client. The statement of client**  
8           **rights must include the following information:**

9           (1) The client has the right to have the client's property  
10          treated with respect.

11          (2) The client has the right to temporarily suspend,  
12          permanently terminate, temporarily add, or permanently add  
13          services in the service plan.

14          (3) The client has the right to file grievances regarding  
15          services furnished or regarding the lack of respect for  
16          property by the personal services agency and is not subject to  
17          discrimination or reprisal for filing a grievance.

18          (4) The client has the right to be free from verbal, physical,  
19          and psychological abuse and to be treated with dignity.

20          (5) A statement that it is not within the scope of the personal  
21          services agency's license to manage the medical and health  
22          conditions of the client if a condition becomes unstable or  
23          unpredictable.

24          (6) The charges for services provided by the personal services  
25          agency.

26          (7) The personal services agency's policy for notifying the  
27          client of any increase in the cost of services.

28          (8) The hours the personal services agency's office is open for  
29          business.

30          (9) That on request the personal services agency will make  
31          available to the client a written list of the names and addresses  
32          of all persons having at least a five percent (5%) ownership or  
33          controlling interest in the personal services agency.

34          (10) The procedures for contacting the personal services  
35          agency's manager, or the manager's designee, while the  
36          personal services agency's office is open or closed.

37          (11) The procedure and telephone number to call to file a  
38          complaint with the personal services agency.

1           (12) That the state department does not inspect personal  
2           service agencies as the part of the licensing process but does  
3           investigate complaints concerning personal service agencies.

4           (13) The procedure and telephone number to call to file a  
5           complaint with the state department along with the business  
6           hours of the state department.

7           **Sec. 13.** A personal services agency shall investigate a complaint  
8           made by a client, the client's family, or the client's personal  
9           representative regarding:

10          (1) service that is or fails to be furnished; and

11          (2) the lack of respect for the client's property by anyone  
12          furnishing services on behalf of the personal services agency.

13          The personal services agency shall document the complaint and the  
14          resolution of the complaint.

15          **Sec. 14.** The personal services agency's manager or the  
16          manager's designee shall be available to respond to client telephone  
17          calls twenty-four (24) hours a day.

18          **Sec. 15.** An employee or agent of a personal services agency who  
19          will have direct client contact must complete a tuberculosis test in  
20          the same manner as required by the state department for licensed  
21          home health agency employees and agents.

22          **Sec. 16. (a)** The competency of an employee or agent of a  
23          personal services agency who will perform attendant care services  
24          at the client's residence must be evaluated by the agency or the  
25          agency's designee for each attendant care services task that the  
26          personal services agency chooses to have that employee or agent  
27          perform. The agency has the sole discretion to determine if an  
28          employee or agent is competent to perform an attendant care  
29          services task.

30          **(b)** After an evaluation, an employee or agent shall be trained in  
31          the attendant care services tasks the personal services agency  
32          believes require improvement. The employee or agent shall be  
33          reevaluated following any training. The evaluation of the employee  
34          or agent and determination by the agency that the employee or  
35          agent is competent to perform the attendant care services task must  
36          occur before the employee or agent performs that task for a client  
37          without direct agency supervision.

38          **(c)** The content of the evaluation and training conducted under

1 this section, including the date and the signature of the person  
 2 conducting the evaluation and training, must be documented for  
 3 each employee or agent who performs personal services.

4 **Sec. 17. (a) Disclosure of ownership and management**  
 5 **information must be made to the state department:**

6 (1) at the time of the personal services agency's request for  
 7 licensure;

8 (2) during each survey of the personal services agency; and

9 (3) when there is a change in the management or in an  
 10 ownership interest of more than five percent (5%) of the  
 11 personal services agency.

12 (b) The disclosure under subsection (a) must include the  
 13 following:

14 (1) The name and address of all persons having at least five  
 15 percent (5%) ownership or controlling interest in the personal  
 16 services agency.

17 (2) The name and address of each person who is an officer, a  
 18 director, a managing agent, or a managing employee of the  
 19 personal services agency.

20 (3) The name and address of the person responsible for the  
 21 management of the personal services agency.

22 (4) The name and address of the chief executive officer and  
 23 the chairperson (or holder of the equivalent position) of the  
 24 governing body that is responsible for the person identified  
 25 under subdivision (3).

26 (c) The determination of an ownership interest and the  
 27 percentage of an ownership interest under this chapter must be  
 28 determined under 45 CFR 420.201 and 45 CFR 420.202, as in effect  
 29 on July 1, 2005.

30 **Sec. 18. A personal services agency shall document evidence of**  
 31 **compliance with the requirements of this chapter and document**  
 32 **services provided to clients. The documentation or copies of the**  
 33 **documentation must be maintained or be electronically accessible**  
 34 **at a personal services agency's office in Indiana for not less than**  
 35 **seven (7) years.**

36 **Sec. 19. (a) The state health commissioner may take one (1) or**  
 37 **more of the following actions on any ground listed in subsection**  
 38 **(b):**

1           **(1) Issue a probationary license.**

2           **(2) Conduct a resurvey.**

3           **(3) Deny renewal of a license.**

4           **(4) Revoke a license.**

5           **(5) Impose a civil penalty in an amount not to exceed one**  
 6           **thousand dollars (\$1,000).**

7           **(b) The state health commissioner may take action under**  
 8           **subsection (a) on any of the following grounds:**

9           **(1) Violation of a provision of this chapter or a rule adopted**  
 10           **under this chapter.**

11           **(2) Permitting, aiding, or abetting the commission of an illegal**  
 12           **act in a personal services agency.**

13           **(c) IC 4-21.5 applies to an action under this section.**

14           **Sec. 20. (a) The state department shall adopt rules under**  
 15           **IC 4-22-2 to govern the procedure for the following:**

16           **(1) Issuing, renewing, denying, or revoking a personal services**  
 17           **agency license.**

18           **(2) Investigating a complaint against a personal services**  
 19           **agency that alleges a violation of this chapter.**

20           **(3) Collecting fees required under this chapter.**

21           **(b) The state department may not add to the substantive or**  
 22           **procedural requirements in this chapter.**

23           **Sec. 21. A licensee or an applicant for a license aggrieved by an**  
 24           **action under this chapter may request a review under IC 4-21.5.**

25           **Sec. 22. (a) In response to a request for review of an order**  
 26           **referred to in subsection (c), the executive board shall appoint an**  
 27           **appeals panel that consists of three (3) members as follows:**

28           **(1) One (1) member of the executive board.**

29           **(2) One (1) attorney admitted to the practice of law in Indiana.**

30           **(3) One (1) individual with qualifications determined by the**  
 31           **executive board.**

32           **(b) An employee of the state department may not be a member**  
 33           **of the panel.**

34           **(c) The panel shall conduct proceedings for review of an order**  
 35           **issued by an administrative law judge under this chapter. The**  
 36           **panel is the ultimate authority under IC 4-21.5.**

37           **Sec. 23. A person who knowingly or intentionally:**

38           **(1) operates a personal services agency; or**

1           **(2) advertises the operation of a personal services agency;**  
 2           **that is not licensed under this chapter commits a Class A**  
 3           **misdemeanor.**

4           SECTION 20. IC 22-1-5 IS ADDED TO THE INDIANA CODE  
 5           AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 6           JULY 1, 2005]:

7           **Chapter 5. Home Care Consumers and Worker Protection**

8           **Sec. 1. As used in this chapter, "attendant care services" has the**  
 9           **meaning set forth in IC 16-18-2-28.5.**

10          **Sec. 2. As used in this chapter, "companion type services" has**  
 11          **the meaning set forth in IC 12-10-17-2(2).**

12          **Sec. 3. As used in this chapter, "consumer" means an individual**  
 13          **who:**

- 14           **(1) receives home care services given by a home care services**
- 15           **worker in the individual's residence; or**
- 16           **(2) pays for and directs the home care services for another**
- 17           **individual.**

18          **Sec. 4. As used in this chapter, "consumer notice" means the**  
 19          **notice described in section 14 of this chapter.**

20          **Sec. 5. As used in this chapter, "department" refers to the**  
 21          **department of labor created under IC 22-1-1-1.**

22          **Sec. 6. As used in this chapter, "home care services" means**  
 23          **skilled and unskilled services provided to an individual at the**  
 24          **individual's residence to enable the individual to remain in the**  
 25          **residence safely and comfortably. The provision of at least two (2)**  
 26          **of the following is included in home care services:**

- 27           **(1) Nursing.**
- 28           **(2) Therapy.**
- 29           **(3) Attendant care.**
- 30           **(4) Companion type services.**
- 31           **(5) Homemaker services.**

32          **Sec. 7. As used in this chapter, "home care services worker"**  
 33          **means an individual performing home care services for**  
 34          **compensation.**

35          **Sec. 8. As used in this chapter, "homemaker services" means**  
 36          **assistance with or performing household tasks that include**  
 37          **housekeeping, shopping, laundry, meal planning and preparation,**  
 38          **handyman services, and seasonal chores.**

1       **Sec. 9. As used in this chapter, "placement agency" means a**  
 2       **person engaged in the business of securing home care services**  
 3       **employment for an individual or securing a home care services**  
 4       **worker for a consumer. The term:**

5           **(1) includes an employment agency, a nurse registry, and an**  
 6           **entity that places a home care services worker for**  
 7           **compensation by a consumer in the consumer's residence to**  
 8           **provide home care services; and**

9           **(2) does not include a worker who solely and personally**  
 10          **provides home care services to another individual at the**  
 11          **residence of that individual.**

12       **Sec. 10. As used in this chapter, "skilled services" means**  
 13       **services provided by a:**

14           **(1) registered nurse (as defined in IC 25-23-1-1.1(a));**

15           **(2) licensed practical nurse (as defined in IC 25-23-1-1.2); or**

16           **(3) health care professional listed in IC 16-27-1-1.**

17       **Sec. 11. As used in this chapter, "worker notice" means the**  
 18       **statement described in section 17 of this chapter.**

19       **Sec. 12. This chapter applies to a placement agency, but does not**  
 20       **apply to a:**

21           **(1) hospital (as defined in IC 16-18-2-179);**

22           **(2) health facility (as defined in IC 16-18-2-167(a)); or**

23           **(3) home health agency (as defined in IC 16-18-2-173).**

24       **Sec. 13. A placement agency:**

25           **(1) must provide a consumer with a consumer notice each time**  
 26           **a home care services worker is placed in the home of the**  
 27           **consumer; and**

28           **(2) is not required to provide a consumer notice when a new**  
 29           **or different home care services worker is substituting for the**  
 30           **regular home care services worker placed with the consumer.**

31       **Sec. 14. A consumer notice must include the following:**

32           **(1) The duties, responsibilities, and obligations of the**  
 33           **placement agency to the:**

34               **(A) home care services worker; and**

35               **(B) consumer.**

36           **(2) A statement identifying the placement agency as:**

37               **(A) an employer;**

38               **(B) a joint employer;**

- 1           (C) a leasing employer; or  
 2           (D) not an employer.
- 3       **(3) A statement that notwithstanding the employment status**  
 4       **of the placement agency, the consumer:**
- 5           (A) may be considered an employer under state and federal  
 6           employment laws; and  
 7           (B) may be responsible for:
- 8           (i) payment of local, state, or federal employment taxes;  
 9           (ii) payment for Social Security and Medicare  
 10          contributions;  
 11          (iii) ensuring payment of at least the minimum wage;  
 12          (iv) overtime payment;  
 13          (v) unemployment contributions under IC 22-4-11; or  
 14          (vi) worker's compensation insurance as required by  
 15          IC 22-3-2-5 and IC 22-3-7-34;  
 16          of the home care services worker.
- 17       **(4) The appropriate telephone number, address, and**  
 18       **electronic mail address of the department for inquiries**  
 19       **regarding the contents of the notice.**
- 20       **The department shall determine the content and format of the**  
 21       **consumer notice.**
- 22       **Sec. 15. The failure of a placement agency to provide a**  
 23       **consumer notice to the consumer at the time a home care services**  
 24       **worker is placed in the consumer's home does not relieve a**  
 25       **consumer from the duties or obligations as an employer. If a**  
 26       **placement agency fails to provide a consumer notice and the**  
 27       **consumer is liable for payment of wages, taxes, worker's**  
 28       **compensation insurance premiums, or unemployment**  
 29       **compensation employer contributions, the consumer has a right of**  
 30       **indemnification against the placement agency, which includes the**  
 31       **actual amounts paid to or on behalf of the home care services**  
 32       **worker as well as the consumer's attorney's fees and costs.**
- 33       **Sec. 16. A placement agency that will not be the actual employer**  
 34       **of the home care services worker shall provide a worker notice as**  
 35       **set forth in section 17 of this chapter to a home care services**  
 36       **worker who is placed with a consumer. The worker notice must:**
- 37           (1) be provided to the home care services worker upon  
 38           placement in the consumer's home; and

(2) specify the home care services worker's legal relationship with the placement agency and the consumer.

Sec. 17. The worker notice referred to in section 16 of this chapter must contain the following:

(1) The duties, responsibilities, and obligations of the placement agency, the consumer, and the home care services worker if the home care services worker is determined to be an independent contractor, including:

(A) a statement of the party responsible for the payment of the home care services worker's wages, taxes, Social Security and Medicare contributions, unemployment contributions, and worker's compensation insurance premiums; and

(B) a statement identifying the party responsible for the home care services worker's hiring, firing, discipline, day to day supervision, assignment of duties, and provision of equipment or materials for use by the home care services worker.

(2) The telephone number, address, and electronic mail address of the department for inquiries regarding the contents of the notice.

The department shall determine the content and format of the consumer notice.

Sec. 18. The department may at any time and upon receiving a complaint from an interested person investigate an alleged violation of this chapter by a placement agency.

Sec. 19. The department may impose a civil penalty not to exceed one thousand dollars (\$1,000) against a placement agency that fails to provide a worker notice or a consumer notice at the times required under section 13 or 16 of this chapter. The civil penalty may be assessed by the department and, if necessary, shall be recovered by the prosecuting attorney of the county in which the violation has occurred or by the attorney general, as provided in IC 22-1-1-18."

Page 3, line 42, delete "continuing" and insert "annual training".

Page 4, line 1, delete "education".

Page 7, line 6, after "violation" insert "of this section".

Page 7, between lines 10 and 11, begin a new paragraph and insert:



1       "SECTION 21. IC 16-27-1-0.5 IS REPEALED [EFFECTIVE JULY  
 2       1, 2005].  
 3       SECTION 22. [EFFECTIVE JULY 1, 2005] **(a) The definitions in**  
 4       **IC 16-27-4, as added by this act, apply to this SECTION.**  
 5       **(b) Notwithstanding IC 16-27-4, as added by this act, a person**  
 6       **is not required to be licensed by the state department of health to**  
 7       **operate a personal services agency before January 1, 2006.**  
 8       **(c) This SECTION expires January 1, 2006."**  
 9       Page 7, line 17, delete "business".  
 10      Renumber all SECTIONS consecutively.  
       (Reference is to SB 206 as reprinted February 16, 2005.)

**and when so amended that said bill do pass.**

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Representative Becker